IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

MFA.No. 684 of 2002()

WCC.64/2000 of W.C.C.,THRISSUR

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APPELLANT: 2ND OPPOSITE PARTY:

NATIONAL INSURANCE COMPANY LIMITED,
CALICUT, NOW REPRESENTED BY ITS ASSISTANT
ADMINISTRATIVE OFFICER, REGIONAL OFFICE,
AJAY VIHAR, M.G.ROAD, KOCHI-16.

BY ADV. SRI.MATHEWS JACOB

RESPONDENTS: APPLICANT:

T.S.BABU, S/O.SIVANKUTTY,
THAMARASSERY HOUSE, PERUVAMKULANGARA, OLLUR,
THRISSUR.

BY ADV. SRI.P.RAMAKRISHNAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19-06-2007 THE COURT ON 19/06/2007 DELIVERED THE FOLLOWING:

ORDER IN CMP NO. 8138 OF 2002 IN M.F.A. 684 OF 2002

DISMISSED

19-06-2007 SD/- K.PADMANABHAN NAIR, JUDGE

//True copy//

K.PADMANABHAN NAIR . J.

M.F.A. No.684 of 2002

Dated this the 19th day of June 2007

JUDGMENT

The insurer in W.C.C 64/2000 has filed this appeal. The respondent was working as a loading and unloading worker. On 7-9-1999 while he was unloading timbers from a lorry bearing Regn No. KL-10/F7008 a large piece of timber fell on the body of the respondent and he sustained injuries. He was taken to hospital and treated. He filed an application claiming an amount of Rs. 85302/- as compensation. The employer though received notice did not appear and contest. The appellant who was the insurer alone contested the matter. The appellant denied the accident, and the employer-employee relationship. The insurer also contended that the quantum of compensation claimed was excessive. The respondent was examined by Dr. K.Soman (AW1) who issued the disability certificate which is marked as Ext. A1. The respondent gave evidence as AW2. He produced A1 to A6 documents. An eye-witness was examined as AW3. The appellant filed a petition to refer the respondent for an examination by a medical board. That application was filed on 10-08-2001. That application was opposed by the respondent by filing counter stating in case that application is allowed it will cause harm to the workman. It was contended that there was no reason for insisting to refer the respondent for an examination by a medical board.

The Deputy Labour Commissioner dismissed the application filed by the appellant and accepted the evidence of AW1 and Ext.A1. The Insurance Court directed the appellant to pay compensation of 1,36 483/- with 12% interest . Challenging that order this appeal is filed.

2. The fact that the respondent was an employee of Sri.K.P. Mamootty is established. The fact that he met with the accident at about 6 a.m on 7-9-1999 was also established. The petitioner sustained injuries and underwent treatment. Ext.A1 is the disability Certificate issued by a medical practitioner. As per the certificate issued by Dr.K.Soman, at the time of accident the following injuries were noted.

a*. Clinical features of traumatic IVPP at L4/L5 and L5/S1 disc space causing neurological defect L5/S1 roof with weakness of the number of both lower limbs.*

b. Stiffness and pain of the back, tenderness at L4/L5 and L5/S1 disc space.

c. Difficulty to bend forward and backward due to dis prolapse lower lumber spaces.

d. Stiffness and painful restriction of all movements of the lumber spaces

e. Difficulty to squat and climb stops.

f. Difficulty to bear weight on the head due to severe back pain.

g.Chronic chest pain and breathlessness to sequlae of contusion and laceration chest.

h. Chronic post traumatic headache and vertigo sequlae of contusion right temporal region scalp.

The Doctor had assessed the permanent disability at 22%. and loss of earning capacity as a head load worker as 60%

3. The learned counsel appearing for the appellant contended that because of the nature of injuries alleged to have been sustained by respondent which is not visible to a naked eye only way of disproving Ext.A1 certificate is by examining the respondent by a medical board. It is submitted that Ext.A1 will show that there was no external visible injury and only by expert examination the actual disability can be assessed. In view of the contention raised by the appellant , the Deputy Labour Commissioner ought to have allowed the application and directed the respondent to appear for an examination by a medical board. Evidence was shut out in the case. So for giving an opportunity to the appellant to get the employee examined by a medical board the case has to go back.

4. In the result this appeal is allowed. The impugned order is set aside. W.C.C. 64/2000 is remanded to the file of the Deputy Labour Commissioner Thrissur for fresh disposal in accordance with law. The

Deputy Labour Commissioner is directed to take W.C.C. 64/2000 back to file and dispose of the same. There will be a direction to the Deputy Labour Commissioner to direct the respondent to submit himself for an examination by a medical board on a date to be fixed by them. The expenses if any, incidental to the examination by the medical board will have to be met by the appellant. The parties shall appear before the Deputy Labour Commissioner on 16-7-2007 . There will be a direction to the Deputy Labour Commissioner to hear and dispose of the matter after giving both sides an opportunity to adduce evidence within a period of six months from the date of appearance.

K.PADMANABHAN NAIR,JUDGE

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